

Book VI.
Title LVII.

As to the Orfitian senate decree.
(Ad senatus consultum Orfitianum.)

Bas. 45.1.40; D. 38.17; Inst. 3.4.

Headnote.

Formerly, children were not permitted to inherit from their mother, because they were not her agnate relatives. But by the Orfitian senate decree, passed in the time of Emperor Marcus, statutory right of succession to the property of a mother was given her children, in preference of other relatives, and that, too, whether such children had been emancipated by the father or not. Inst. 3.4. The decree mentioned did not confer any rights in such succession on grandchildren. But such rights were granted by subsequent imperial constitution, as we have already seen at C. 6.55.9 and 10. All of the provisions were among those which gradually leveled all differences between agnate and cognate relationship.

Now while children inherited the property of their mother, as here stated, still as to what rights they obtained depended on whether their father was then living, and whether the children were emancipated or not. If the father was dead, they obtained, of course, complete right over the property inherited. If, however, the father was living, and the children were not emancipated, but under paternal power, the father had the usufruct of the property during his life, the fee being preserved for the children, and it made no difference whether the father remarried or not. If the children were already emancipated at the time of the death of the mother, the father had a usufruct in only a portion of the property. The details of this are stated in C. 6.60. Upon the death of a child under power, the property acquired from the mother as stated in C. 6.59.11.

6.57.1. Emperor Alexander to Evangelus.

If a woman dies intestate, leaving surviving her consanguineous relatives (i.e. by the same father), and a mother and a daughter, the whole inheritance belongs to the daughter, according to the Orfitian senate decree.
Promulgated January 18 (225).

6.57.2. Emperors Diocletian and Maximian and the Caesars to Metrodora.

An inheritance of a mother is divided not according to the number of survivors at the time of her death, but according to the number of parties who actually become heirs. 1. Hence, if your mother died, leaving you and a brother, both emancipated, and also two other brothers who were still under paternal power, and the two latter, who were still under paternal power, died before they acquired their mother's inheritance for themselves, there is no doubt that this inheritance will be divided into two equal portions.
Subscribed at Sirmium March 27 (293).

Note.

No person other than a male parent having paternal power could have self-successors who inherited without acceptance. Headnote to C. 6.30, and note to C. 6.30.3.

Hence in this case the inheritance from the mother went equally to those of the children who accepted the inheritance during their lifetime, or who died during the time given for deliberation. See C. 6.30.19.

6.57.3. The same to Juliana.

A daughter, who acts as an heir, is not, according to the Orfitian senate decree, forbidden to inherit from her intestate mother, though she does not ask for the right of possession of the inheritance.

Subscribed October 21 (293).

Note.

A child inherited from his or her mother by statutory right - under the civil law, and not under the praetorian law, although the right of possession granted by that law might also be asked by a person who inherited by statutory right. To act as heir was equivalent to an acceptance under the civil law. Headnote (3) to C. 6.9.

6.57.4. Emperors Gratian, Valentinian and Theodosius to Hilarius, Praetorian Prefect.

Whenever an inheritance of emancipated sons or daughters is in question, the right to the whole intestate succession in its entirety belongs to their children, and their father and mother have no right to any part of their intestate inheritance.

Given at Milan February 19 (383).

C. Th. 5.1.3.

Note.

Where an unemancipated child died, leaving children surviving him, the father had certain rights in the property left by the child in preference to the grandchildren. Headnote C. 6.60. But where the child was not under paternal power, the children of such deceased child had preferential rights. Previously [a] father was preferred to children of unemancipated daughters. 2 Vangerow 42.

6.57.5. Emperor Justinian to Demosthenes, Praetorian Prefect.

When a woman of illustrious rank had a son by a legal marriage, and another son who was spurious and whose father was uncertain, it was doubted as to how the mother's inheritance was to be divided, whether only between the legitimate children or also between them and those who were spurious. 1. We ordain that if such woman of illustrious rank has legitimate children, none of her property shall go to the spurious children either pursuant to a testament on intestacy or pursuant to a gift among the living, because we think it harmful, harsh and unworthy of our times to even mention spurious children in connection with free-born women of illustrious rank, whose special duty it is to be chaste, and we justly dedicate this law to chastity, which should always be observed. 2. But if a free concubine has a son or daughter as the result of her alliance, permitted by custom, with a free man, no good reason exists why they should not, along with legitimate children, inherit the property which the mother legally possesses in her own right.

Given at Chalcedon September 17 (529).

Note.

Ordinarily, illegitimate children were admitted to the inheritance of their mother. Inst. 3.4.13.¹ The subject of illegitimate children and the provisions which a father could make for them is dealt with at length at C. 5.27.

6.57.6. The same to Julianus, Praetorian Prefect.

Someone left liberty to his female slave, in a trust, but the person directed to grant it delayed to do so and the female gave birth to a child. All the ancient jurists agreed that the child born during the delay would be free, but here was a dispute among them whether the child could inherit from its deceased mother. 1. Settling such dispute and not permitting it to continue, we ordain that such offspring of the mother is entitled to the inheritance, on intestacy, preserving for the offspring the statutory rights under the Orfitian senate decree; and the mother, pursuant to the Tertullian senate decree, and the offspring, pursuant to the Orfitian senate decree, may inherit from each other.² Given at Constantinople October 1 (530).

¹ Blume penciled in a question mark after this citation.

² [Blume] Compare C. 6.35.11; C. 7.4.3.15 and 16.